

FAC 90-36

BEFORE vs. AFTER

PART 25

FOREIGN ACQUISITION

25.101 Definitions

FAR as of FAC 90-35

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“Instrumentality,” as used in this subpart, does not include an agency or division of the government of a country, but may be construed to include arrangements such as the European Economic Community.

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FAR as revised by FAC 90-36

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“Instrumentality,” as used in this subpart, does not include an agency or division of the government of a country, but may be construed to include arrangements such as the European Union.

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25.105 Acquiring civil aircraft and related articles.

FAR as of FAC 90-35

(a) The U.S. Trade Representative, on February 19, 1980 (45 FR 12349, February 25, 1980), waived applying the Buy American Act to acquiring civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft. The representative acted under the authority of section 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2513). Countries and Instrumentalities that are parties to the agreement (as of January 1, 1986) are ~~Austria~~, Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom), Japan, Norway, Romania, ~~Sweden~~ and Switzerland. The Office of the U.S. Trade Representative, Washington, DC 20506, can provide information on changes to the list of parties to the agreement made since January 1, 1986.

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FAR as revised by FAC 90-36

(a) The U.S. Trade Representative, on February 19, 1980 (45 FR 12349, February 25, 1980), waived applying the Buy American Act to **the acquisition of** civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft. The representative acted under the authority of section 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2513). Countries and Instrumentalities that are parties to the agreement (as of January 1, **1996**) are Canada, the European **Union** (**Austria**, Belgium, Denmark, **Finland**, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, **Sweden** and the United Kingdom), Japan, Norway, Romania, and Switzerland. The Office of the U.S. Trade Representative, Washington, DC 20506, can provide information on changes to the list of parties to the agreement made since January 1, **1996**

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25.109 Solicitation provisions and contract clauses.

FAR as of FAC 90-35

(d) Except as provided in paragraph (g) of this section, ~~or when the clause prescribed by paragraph (f) is used, or when the clause prescribed in 25.408(a)(4) is used,~~ the contracting officer shall insert the clause at 52.225-3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States.

~~—(e) The contracting officer shall insert the provision at 52.225-16, Buy American Act — Supplies under European Community Agreement Certificate, in solicitations where the clause at 52.225-17, Buy American Act — Supplies under European Community Agreement, is used.~~

~~—(f) Except as provided in paragraph (g) of this section, the contracting officer shall insert the clause at 52.225-17, Buy American Act—Supplies under European Community Agreement, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies when the estimated acquisition value meets or exceeds \$182,000 for the agencies listed at FAR 25.407, except for the Power Marketing Administrations' segment of the Department of Energy, where the estimated acquisition value is \$450,000 or more.~~

(g) Do not use the clause prescribed in paragraph (d) of this section when—

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(2) The acquisition is made under the Trade Agreements Act (see subpart 25.4); or

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(d) Except as provided in paragraph (e) of this section, the contracting officer shall insert the clause at 52.225-3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States.

(e) Do not use the clause prescribed in paragraph (d) of this section when—

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(2) The acquisition is made under a trade agreement (see subpart 25.4); or

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25.202 Policy.

FAR as of FAC 90-35

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(c) For construction contracts with an acquisition value of \$6,500,000 or more, see 25.402(a)(3) and (4).

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(c) For construction contracts with an acquisition value of \$6,500,000 or more, see 25.402(a)(1) and (3).

25.205 Solicitation provision and contract clause.

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(b) For construction contracts with an estimated acquisition value of ~~\$6,500,000 (\$8,000,000 for the Power Marketing Administration)~~ or more, to be awarded by agencies listed in 25.407, insert the clause at 52.225-15, Buy American Act—Construction Materials under ~~European Community~~ and North American Free Trade Agreements, in solicitations and contracts for construction.

FAR as revised by FAC 90-36

(b)(1) For construction **solicitations and** contracts with an estimated acquisition value of **\$7,311,000** or more, insert the **basic** clause at 52.225-15, Buy American Act—Construction Materials under **Trade Agreements Act** and North American Free Trade Agreement.

(2) **For construction solicitations and contracts with an estimated value from \$6,500,000 to \$7,311,000, insert the clause with its Alternate I.**

25.400 Scope of Subpart.

FAR as of FAC 90-35

This subpart provides policies and procedures for acquisitions subject to the Agreement on Government Procurement and the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), and other trade agreements, including—

(a) Acquisitions from countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.);

(b) Acquisitions involving offers of Israeli end products under the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note);

(c) Acquisitions involving offers of Canadian or Mexican end products under the North American Free Trade Agreement (NAFTA), as approved by Congress in the NAFTA Implementation Act (Pub. L. 103-182, 107 Stat. 2057); and

(d) The Agreement on Civil Aircraft (19 U.S.C. 2513).

(e) ~~The Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement.~~

FAR as revised by FAC 90-36

(a) This subpart provides policies and procedures for acquisitions subject to the Agreement on Government Procurement, **as approved by Congress in** the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), **and as amended by the Uruguay Round Agreements Act (Pub. L. 103-465)**, and other trade agreements including—

(1) Acquisitions from countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.);

(2) Acquisitions involving offers of Israeli end products under the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note);

(3) Acquisitions involving offers of Canadian or Mexican end products under the North American Free Trade Agreement (NAFTA), as approved by Congress in the NAFTA Implementation Act (Pub. L. 103-182, 107 Stat. 2057); and

(4) The Agreement on Civil Aircraft (19 U.S.C. 2513).

(b) **For application of the trade agreements which are unique to individual agencies (Department of Defense, National Aeronautics and Space Administration, Department of Energy (Power Marketing Administration), Department of the Inte-**

rior (Bureau of Reclamation) and Department of Transportation (Federal Aviation Administration), see agency regulations.

25.401 Definitions.

FAR as of FAC 90-35

“Canadian end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Canada, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~

* * * * *

“Caribbean Basin country end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Caribbean Basin country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~ The term excludes products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

* * * * *

“Designated country”, as used in this subpart, means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed below:

Austria
Bangladesh
Belgium

Italy
Japan
Lesotho

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“Canadian end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Canada, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

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“Caribbean Basin country end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Caribbean Basin country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. The term excludes products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

* * * * *

“Designated country”, as used in this subpart, means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed below:

Aruba
Austria
Bangladesh

Japan
Lesotho
Liechtenstein

Benin	Liechtenstein	Belgium	Luxembourg
Bhutan	Luxembourg	Benin	Malawi
Botswana	Malawi	Bhutan	Maldives
Burkina Faso	Maldives	Botswana	Mali
Burundi	Mali	Burkina Faso	Nepal
Canada	Nepal	Burundi	Netherlands
Cape Verde	Netherlands	Canada	Niger
Central African Republic	Niger	Cape Verde	Norway
Chad	Norway	Central African Republic	Portugal
Comoros	Portugal	Chad	Republic of Korea
Denmark	Rwanda	Comoros	Rwanda
Federal Republic of	Singapore	Denmark	Somalia
Germany	Somalia	Finland	Spain
Finland	Spain	France	Sudan
France	Sudan	Gambia	Sweden
Gambia	Sweden	Germany	Switzerland
Greece	Switzerland	Greece	Tanzania U.R.
Guinea	Uganda	Guinea	Uganda
Haiti	United Kingdom	Haiti	United Kingdom Ire-
Hong Kong	United Republic of	land	Western Samoa
Ireland	Tanzania	Israel	Yemen
Israel	Western Samoa	Italy	
Yemen			

“Designated country construction material”, as used in this subpart, means construction material that (a) is wholly the growth, product, or manufacture of a designated country, or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

“Designated country end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the designated country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~

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“Designated country end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the designated country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

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“Mexican end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Mexico, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~

“Mexican end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Mexico, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

25.402 Policy.

FAR as of FAC 90-35

(a)(1) Executive Order 12260 requires the U.S. Trade Representative to set the dollar threshold for application of the Trade Agreements Act. The current threshold is \$~~182,000~~. The threshold will be published in the Federal Register and will be distributed through agency procedures on an expedited basis. When the value of the proposed acquisition of an eligible product is estimated to be at or over the dollar threshold, agencies shall evaluate offers for an eligible product without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3). When the value of the proposed acquisition is estimated to be below the Trade Agreements Act threshold, the restrictions of the Buy American Act or the Balance of Payments Program shall be applied to foreign offers, except as noted in paragraphs (a)(2) and (a)(3) of this section (see 25.105).

(2) As required by Article 15 of the U.S.-Israel Free Trade Area Agreement, agencies other than the Department of Defense shall evaluate offers of Israeli

FAR as revised by FAC 90-36

(a)(1) Executive Order 12260 requires the U.S. Trade Representative to set the dollar threshold for application of the Trade Agreements Act. The current threshold is **\$190,000 for supply and services contracts and \$7,311,000 for construction contracts**. The thresholds will be published in the Federal Register and will be distributed through agency procedures on an expedited basis. When the value of the proposed acquisition of an eligible product is estimated to be at or over the dollar threshold, agencies shall evaluate offers for an eligible product without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3). **When the value of the proposed construction contract is estimated to be at or over the dollar threshold, agencies shall evaluate offers of designated country construction materials without regard to the restrictions of the Buy American Act (see subpart 25.2) or the Balance of Payments Program (see subpart 25.3).** When the value of the proposed acquisition is estimated to be below the Trade Agreements Act threshold, the restrictions of the Buy American Act or the Balance of Payments Program shall be applied to foreign offers, except as noted in paragraphs (a)(2) and (a)(3) of this section (see 25.105).

(2) As required by Article 15 of the U.S.-Israel Free Trade Area Agreement, agencies other than the Department of Defense, **Department of Energy,**

end products at or above \$50,000 in amount without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3).

(3) As required by the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057), agencies shall evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3):

(i) NAFTA country construction materials under construction contracts with an estimated acquisition value of \$6,500,000 or more ~~for the agencies in 25.407, except for the Power Marketing Administration segments of the Department of Energy where the estimated acquisition value is \$8,000,000 or more.~~

(ii) Canadian end products under supply contracts with an estimated value above \$25,000 and Mexican end products under supply contracts with an estimated value of \$50,000 or more ~~for the agencies in 25.407, except for the Power Marketing Administrations' segment of the Department of Energy where the estimated acquisition value is \$250,000 or more.~~ * * * * *

~~—(4) As required by the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement (European Community Agreement) as implemented by EO 12849, application of the Buy American Act is exempted for the following:~~

~~—(i) EC construction materials under construction contracts with an estimated acquisition value of \$6,500,000 or more purchased by the agencies listed in 25.407.~~

~~—(ii) C country end products under supply contracts with an estimated acquisition value of \$182,000 or more purchased by the agencies listed at 25.407, except for the Power Marketing Administrations' segment of the Department of Energy where the estimated acquisition value is \$450,000 or more.~~

~~(5) * * * * *~~

~~(6) * * * * *~~

(c) ~~Except when waived under section 302(b)(2) of the Trade Agreements Act, there shall be no acquisition of foreign end products subject to the Act unless the foreign end products are designated country~~

Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision shall evaluate offers of Israeli end products at or above \$50,000 in amount without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3).

(3) As required by the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057), agencies shall evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3):

(i) NAFTA country construction materials under construction contracts with an estimated acquisition value of \$6,500,000 or more.

(ii) Canadian end products under supply contracts with an estimated value above \$25,000 and Mexican end products under supply contracts with an estimated value of \$50,000 or more.

* * * * *

(4) * * * * *

(5) * * * * *

(c)(1) There shall be no acquisition of foreign end products subject to the **Trade Agreements Act** unless the foreign end products are **eligible** products, **except as provided in** paragraphs

~~end products or Caribbean Basin country end products. This prohibition does not apply to subparagraphs (c)(2) and (c)(3) of this section.~~

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(c)(2) and (c)(3) of this section.

(2) The prohibition in paragraph (c)(1) of this section does not apply if offers of domestic end products or of eligible products are either not received or are insufficient to fulfill the requirements.

(3) A waiver may be granted under section 302(b)(2) of the Trade Agreements Act (19 U.S.C. 2512(b)(2)).

25.403 Exceptions.

FAR as of FAC 90-35

25.403 Exceptions.

This subpart does not apply to—

(a) ~~An acquisition of an eligible product where the estimated value of the acquisition falls below the dollar thresholds in 25.402(a);~~

(b) ~~Products of countries (1) not identified in 25.401 as designated, Caribbean Basin, or North American Free Trade Agreement countries, or (2) barred by 25.402(c);~~

(e) Purchases under small or small disadvantaged business preference programs;

(d)(1) Purchases of arms, ammunition or war materials, or purchases indispensable for national security or for national defense purposes, by the Department of Defense, as provided in departmental regulations;

(2) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

(c) ~~Construction contracts (but see 25.402(a)(3) and (4));~~

—(f) ~~Service contracts (except those services incidental to the purchase of eligible products; provided, that the value of the services is not greater than the value of the product);~~

(g) Research and development contracts;

(h) ~~Purchases by the U.S. Army Corps of Engineers, except as provided at 25.402(a)(3) and (4);~~

(i) Purchases of items for resale;

(j) Purchases under subpart 8.6, Acquisition from Federal Prison Industries, Inc., and subpart 8.7, Acquisition from the Blind or Other Severely Handicapped; or

(k) Reserved;

—(l)(1) ~~For purchases subject to North American~~

FAR as revised by FAC 90-36

25.403 Exceptions.

This subpart does not apply to—

(a) Acquisitions below the dollar thresholds in 25.402(a) **(1) through (3), respectively;**

(b) Purchases under small or small disadvantaged business preference programs;

(c)(1) Purchases of arms, ammunition or war materials, or purchases indispensable for national security or for national defense purposes, by the Department of Defense, as provided in departmental regulations;

(2) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

(d) Research and development contracts;

(e) Purchases of items for resale;

(f) Purchases under subpart 8.6, Acquisition from Federal Prison Industries, Inc., and subpart 8.7, Acquisition **from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled;** or

~~Free Trade Agreement or the European Community Agreement, agencies not listed at 25.407;~~

~~—(2) For other purchases under this subpart, agencies not listed at 25.406; or~~

~~(m) For purchases of products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703 (b); which presently are—~~

~~(1) Textiles and apparel articles that are subject to textile agreements;~~

~~(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for this purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;~~

~~(3) Tuna, prepared or preserved in any manner in airtight containers;~~

~~(4) Petroleum, or any product derived from petroleum; and~~

~~(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column two rates of duty apply.~~

~~(g) Purchases of products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703 (b); which presently are—~~

~~(1) Textiles and apparel articles that are subject to textile agreements;~~

~~(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for this purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;~~

~~(3) Tuna, prepared or preserved in any manner in airtight containers;~~

~~(4) Petroleum, or any product derived from petroleum; and~~

~~(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column two rates of duty apply.~~

25.406

This section removed and reserved.

25.407

This section removed and reserved.

25.408 Solicitation provisions and contract clause.

FAR as of FAC 90-35

(a) * * * * *

(2) The clause at 52.225–9, Buy American Act—Trade Agreements—Balance of Payments Program, where the contracting officer has determined that the acquisition is subject to the Trade Agreements Act;
* * * * *

(4) The clause at 52.225–21, Buy American Act—North American Free Trade Agreement (NAFTA)

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(a) * * * * *

(2) The clause at 52.225–9, Buy American Act—Trade Agreements—Balance of Payments Program, **in solicitations and contracts for supplies** where the contracting officer has determined that the acquisition is subject to the Trade Agreements Act;
* * * * *

(4) The clause at 52.225–21, Buy American Act—North American Free Trade Agreement (NAFTA)

Implementation Act—Balance of Payments Program, where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA.

Implementation Act—Balance of Payments Program, **in solicitations and contracts for supplies** where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA.

25.1000 Scope of subpart

FAR as of FAC 90-35

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FAR as revised by FAC 90-36

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For thresholds which are unique to individual agencies (e.g., Power Marketing Administration of the Department of Energy), see agency regulations.

25.1001 Definitions.

FAR as of FAC 90-35

As used in this subpart—

“Sanctioned European ~~Community (EC)~~ construction” means construction to be performed in a sanctioned member state of the ~~EC~~ and the contract is awarded by a contracting activity located in the United States or its territories.

“Sanctioned ~~EC~~ end product” means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the ~~EC~~ or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that from which it was so transformed in a sanctioned member state of the ~~EC~~. The term includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~

“Sanctioned ~~EC~~ services” means services to be performed in a sanctioned member state of the ~~EC~~ when the contract is awarded by a contracting activity located in the United States or its territories.

“Sanctioned member state of the ~~EC~~” means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

FAR as revised by FAC 90-36

As used in this subpart—

“Sanctioned European **Union (EU)** construction” means construction to be performed in a sanctioned member state of the **EU** and the contract is awarded by a contracting activity located in the United States or its territories.

“Sanctioned **EU** end product” means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the **EU** or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that from which it was so transformed in a sanctioned member state of the **EU**. The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself.

“Sanctioned **EU** services” means services to be performed in a sanctioned member state of the **EU** when the contract is awarded by a contracting activity located in the United States or its territories.

“Sanctioned member state of the **EU**” means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

25.1002 Trade sanctions.

<i>FAR as of FAC 90-35</i>	<i>FAR as revised by FAC 90-36</i>
(a) * * * * *	(a) * * * * *
(1) Sanctioned EC end products with an estimated acquisition value less than \$190,000.	(1) Sanctioned EU end products with an estimated acquisition value less than \$190,000.
(2) Sanctioned EC construction with an estimated acquisition value less than \$7,311,000.	(2) Sanctioned EU construction with an estimated acquisition value less than \$7,311,000.
(3) Sanctioned EC services as follows:	(3) Sanctioned EU services as follows:
(i) All service contracts awarded by the Power Marketing Administrations of the Department of Energy.	(i) Service contracts with an estimated acquisition value less than \$190,000.
(ii) Service contracts with an estimated acquisition value less than \$176,000 for all other executive agencies.	
(iii) Regardless of dollar value, contracts for— * * * * *	(ii) Regardless of dollar value, contracts for— * * * * *
(c) <i>Authority to exempt certain procurements.</i> (1) The head of an agency, without power of redelegation, may authorize the award of a contract or class of contracts for sanctioned EC end products, services, and construction, the purchase of which is otherwise prohibited under paragraph (a) of this section if the agency head determines that such action is necessary— * * * * *	(c) <i>Authority to exempt certain procurements.</i> (1) The head of an agency, without power of redelegation, may authorize the award of a contract or class of contracts for sanctioned EU end products, services, and construction, the purchase of which is otherwise prohibited under paragraph (a) of this section if the agency head determines that such action is necessary— * * * * *

25.1003 Solicitation provisions and contract clauses.**25.1003 Contract clauses.**

<i>FAR as of FAC 90-35</i>	<i>FAR as revised by FAC 90-36</i>
Except as provided in 25.1002(b) and (c)—	Except as provided in 25.1002(b) and (c)—
(a) Insert the clause at 52.225-18, European Community Sanctions for End Products, in solicitations and contracts for supplies with an estimated acquisition value less than: (1) \$450,000 for Power Marketing Administrations of the Department of Energy; and (2) \$182,000 for all other executive agencies.	(a) Insert the clause at 52.225-18, European Union Sanctions for End Products, in solicitations and contracts for supplies with an estimated acquisition value less than \$190,000 .
(b) Insert the clause at 52.225-19, European Community Sanction for Services, in solicitations and contracts (1) for all services purchased by the Power Marketing Administrations of the Department of Energy; (2) for services with an estimated value less than \$182,000 purchased by all other executive agencies; and (3) all services listed in FAR 25.1002(a)(3)(iii).	(b) Insert the clause at 52.225-19, European Union Sanction for Services, in solicitations and contracts for— (1) Services with an estimated acquisition value less than \$190,000; and (2) All services listed in FAR 25.1002(a)(3)(ii).

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders -Commercial Items.

<i>FAR as of FAC 90-35</i>	<i>FAR as revised by FAC 90-36</i>
* * * * *	* * * * *
CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -COMMERCIAL ITEMS (OCT 1995)	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -COMMERCIAL ITEMS (JAN 1996)
* * * * *	* * * * *
(b) * * * * *	(b) * * * * *
--(12) 52.225-17, Buy American Act -- Supplies under European Community Sanctions for End Products (E.O. 12849).	--(12) Reserved.
--(13) 52.225-18, European Community Sanctions for End Products (E.O. 12849).	--(13) 52.225-18, European Union Sanctions for End Products (E.O. 12849).
--(14) 52.225-19, European Community Sanctions for Services (E.O. 12849).	--(14) 52.225-19, European Union Sanctions for Services (E.O. 12849).
* * * * *	* * * * *

52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.

<i>FAR as of FAC 90-35</i>	<i>FAR as revised by FAC 90-36</i>
As prescribed in 25.109(c), insert the following provision in solicitations for the acquisition of civil aircraft and related articles:	As prescribed in 25.109(c), insert the following provision:
WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES (APR 1984)	WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES (JAN 1996)
* * * * *	* * * * *
(b) The U.S. Trade Representative has waived applying of the Buy American Act to the acquisition of civil aircraft and related articles (as defined in paragraph (a) of this clause) of countries or instrumentalities that are parties to the Agreement on Trade in Civil Aircraft. As of January 1, 1984, those countries and instrumentalities include Austria , Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom), Japan, Norway, Romania, Sweden , and Switzerland.	(b) The U.S. Trade Representative has waived applying the Buy American Act to the acquisition of civil aircraft and related articles (as defined in paragraph (a) of this clause) of countries or instrumentalities that are parties to the Agreement on Trade in Civil Aircraft. As of January 1, 1996 , those countries and instrumentalities include Canada, the European Union (Austria , Belgium, Denmark, Finland , France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal , Spain , Sweden , and the United Kingdom), Japan, Norway, Romania, and Switzerland.
* * * * *	* * * * *

52.225-9 Buy American Act-Trade Agreements-Balance of Payments Program.

FAR as of FAC 90-35

* * * * *

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (JAN 1994)

(a) * * * * *

“Caribbean Basin country end product”, * * * * *. The term includes services (except transportation services) incidental to its supply; *provided* that the value of those incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~ * * * * *

“Designated country end product”, * * * * *. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~ * * * * *

“NAFTA country end product”, * * * * *. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~

(b) * * * * * Contractors may not supply a foreign end product for line items subject to the Trade Agreements Act unless the foreign end product is a ~~designated, NAFTA, or Caribbean end product (see FAR 25.401), or unless~~ a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

FAR as revised by FAC 90-36

* * * * *

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (JAN 1996)

(a) * * * * *

“Caribbean Basin country end product”, * * * * *. The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. * * * * *

“Designated country end product”, * * * * *. The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. * * * * *

“Eligible product”, as used in this clause, means a designated, North American Free Trade Agreement (NAFTA), or Caribbean Basin country end product. * * * * *

“NAFTA country end product”, * * * * *. The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(b) * * * * * Contractors may not supply a foreign end product for the line items subject to the Trade Agreements Act unless— **(1) The foreign end product is an eligible product (see FAR 25.401); (2) The Contracting Officer determines that offers of domestic end products or of eligible products are either not received or are insufficient to fulfill the Government’s requirements; or (3) A waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).**

52.225-15 Buy American Act-Construction Materials under ~~European Community~~ and North American Free Trade Agreements.

52.225-15 Buy American Act-Construction Materials under Trade Agreements Act and North American Free Trade Agreement.

FAR as of FAC 90-35

FAR as revised by FAC 90-36

As prescribed in 25.205(b), insert the following clause:

As prescribed in 25.205(b)(1), insert the following clause:

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER ~~EUROPEAN COMMUNITY~~ AND NORTH AMERICAN FREE TRADE AGREEMENTS
(MAY 1995)

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER **TRADE AGREEMENTS ACT** AND NORTH AMERICAN FREE TRADE AGREEMENT
(JAN. 1996)

(a) * * * * *

—“~~European Community (EC) construction material~~” means a construction material that (a) is wholly the growth, product, or manufacture of an EC country or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in an EC country into a new and different construction material distinct from the materials from which it was transformed.

—“~~EC country~~” means Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, ~~the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement~~, and the North American Free Trade Agreement (NAFTA), provide that ~~EC~~ and NAFTA construction materials are exempted from application of the Buy American Act.

(c) The Contractor agrees that only domestic construction materials, NAFTA country construction materials or ~~EC~~ construction materials will be used by the Contractor, subcontractors, ~~materialmen~~ and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

(End of clause)

(a) * * * * *

“**Designated country construction material**” means a construction material that (a) is wholly the growth, product, or manufacture of a designated country (as defined at FAR 25.401), or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

* * * * *

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the **Trade Agreements Act** and the North American Free Trade Agreement (NAFTA) provide that **designated country** and NAFTA construction materials are exempted from application of the Buy American Act.

(c) The Contractor agrees that only domestic construction materials, NAFTA country construction materials or **designated country** construction materials will be used by the Contractor, subcontractors, **material men** and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

(End of clause)

Alternate I (Jan 1996). As prescribed in 25.205(b)(2), substitute the following paragraphs (b) and (c) in place of paragraphs (b) and (c) of the basic clause:

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the North American Free Trade Agreement (NAFTA) provides that NAFTA construction materials are exempted from application of the Buy American Act.

(c) The Contractor agrees that only domestic construction materials or NAFTA country construction materials will be used by the Contractor, subcontractors, material men and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

52.225-16. This section removed and reserved.

52.225-17. This section removed and reserved.

52.225-18 ~~European Community~~ Sanction for End Products.

52.225-18 European Union Sanction for End Products.

<i>FAR as of FAC 90-35</i>	<i>FAR as revised by FAC 90-36</i>
* * * * *	* * * * *
EUROPEAN COMMUNITY SANCTION FOR END PRODUCTS (MAY 1995)	EUROPEAN UNION SANCTION FOR END PRODUCTS (JAN 1996)
(a) * * * * *	(a) * * * * *
“Sanctioned European Community end product” means an article that (1) is wholly the growth, product or manufacture of a sanctioned member state of the EEC , or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentally, has been substantially transformed in a sanctioned EEC country into a new and different article of commerce with a name, character or use distinct from that from which it was so transformed. The term includes services (except transportation services) incidental to its supply;	“Sanctioned European Union (EU) end product” means an article that (1) is wholly the growth, product or manufacture of a sanctioned member state of the EU , or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentally, has been substantially transformed in a sanctioned EU country into a new and different article of commerce with a name, character or use distinct from that from which it was so transformed. The term refers to a product offered for purchase under a supply contract ,

provided, that the value of these incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~

“Sanctioned member state of the ~~EC~~” is any of the following countries: Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom.

(b) *Agreement*. The Contractor agrees that no sanctioned ~~EC~~ end products will be delivered under this contract.

(End of clause)

but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself.

“Sanctioned member state of the **EU**” is any of the following countries: Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom.

(b) *Agreement*. The Contractor agrees that no sanctioned **EU** end products will be delivered under this contract.

(End of clause)

52.225-19 European ~~Community~~ Sanction for Services.

52.225-19 European Union Sanction for Services.

FAR as of FAC 90-35

* * * * *

EUROPEAN COMMUNITY SANCTION FOR
SERVICES
(MAY 1995)

(a) *Definition*. “Sanctioned member state of the European ~~Community (EC)~~,” as used in this clause, is any of the following countries: Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom.

(b) *Agreement*. The Contractor agrees not to perform services under this contract in a sanctioned member state of the ~~EC~~. This does not apply to subcontracts.

(End of clause)

FAR as revised by FAC 90-36

* * * * *

EUROPEAN **UNION** SANCTION FOR
SERVICES
(JAN 1996)

(a) *Definition*. “Sanctioned member state of the European **Union (EU)**,” as used in this clause, is any of the following countries: Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom.

(b) *Agreement*. The Contractor agrees not to perform services under this contract in a sanctioned member state of the **EU**. This does not apply to subcontracts.

(End of clause)

52.225-21 Buy American Act- North American Free Trade Agreement Implementation Act-Balance of Payments Program.

FAR as of FAC 90-35

* * * * *

BUY AMERICAN ACT—NORTH AMERICAN
FREE TRADE AGREEMENT IMPLEMENTA-
TION ACT—BALANCE OF PAYMENTS
PROGRAM
(JAN 1994)

FAR as revised by FAC 90-36

* * * * *

BUY AMERICAN ACT—NORTH AMERICAN
FREE TRADE AGREEMENT IMPLEMENTA-
TION ACT—BALANCE OF PAYMENTS
PROGRAM
(JAN 1996)

(a) Definitions.

* * * * *

“NAFTA country end product” * * * * *

The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. ~~It does not include service contracts as such.~~

~~—(d) If this contract contains the clause at 52.225-17, Buy American Act - Supplies under European Community Agreement, the Contractor may deliver EC country end products notwithstanding the provisions of paragraph (c).~~

(e) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the Federal Acquisition Regulation.

(End of clause)

(a) Definitions.

* * * * *

“NAFTA country end product” * * * * *

The term **refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product** includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(d) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the Federal Acquisition Regulation.

(End of clause)